

CALIFORNIA PORTLAND CEMENT COMPANY

IBLA 77-539

Decided December 28, 1977

Appeal from Utah State Office, Bureau of Land Management, notice of proposed readjustment of coal lease Salt Lake 051279-063188.

Appeal dismissed.

1. Appeals -- Coal Leases and Permits: Leases -- Rules of Practice:  
Appeals: Standing to Appeal

Under 43 CFR 3522.2-1(a), a proposed readjustment of a coal lease should not be appealed directly to the Board of Land Appeals under 43 CFR 4.410, but, rather, a lessee's objections thereto should first be referred to and acted upon by the State Office, Bureau of Land Management.

APPEARANCES: M. William Tilden, Esq., Lonergan, Jordan, Gresham, Varner & Savage, San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

California Portland Cement Company has appealed from the issuance by the Utah State Office, Bureau of Land Management (BLM), of a "Notice of Proposed Readjustment of Lease" with respect to coal lease SL-051279-063188. The Notice was issued under 43 CFR 3522.2-1 1/ - -

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1/ 43 CFR 3522.2-1 provides in part:

"(a) General. The terms and conditions of coal, potassium, and phosphate leases are subject to readjustment at the end of each 20-year period succeeding the effective date of the lease unless otherwise provided by law at the time of the expiration of such periods. Before the expiration of each 20-year period, whenever feasible, the lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after

and stated in part: "Unless the lessee within 30 days after receipt of notice of any proposed readjustment files either an objection to the proposed readjustment or a relinquishment of his lease, he will be deemed to have agreed to the readjusted terms." Appellant filed his notice of appeal with the Board of Land Appeals and stated the appeal was "as required by 43 CFR 4.400 et seq." Appellant also set forth that "[t]his Notice of Appeal also constitutes an objection to the proposed readjustment of said coal lease, as required by 43 CFR @ 3522.2-1(b) \* \* \*."

[1] The action by the BLM was not a final action subject to appeal and the appeal should be dismissed. Where a lessee files an objection to a proposed readjusted term, such objection should be considered by the State Office before it makes the decision as to what terms should be included in the readjustment. 43 CFR 3522.2-1(a). If a lessee is adversely affected by a final readjustment, then an appeal to this Board may be taken under 43 CFR 4.410.

In view of this dismissal, appellant's request for a hearing under 43 CFR 4.415 is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed without prejudice.

Joseph W. Goss  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Frederick Fishman  
Administrative Judge

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fn.1 (continued)

receipt of the notice, unless the lessee files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms.

"(b) Coal. All coal leases will be readjusted, if necessary at the end of the next scheduled adjustment of terms and conditions under paragraph (a) above by the addition of provisions consistent with 43 CFR 3503.3-2(b)(1) so that they require advance royalties. \* \* \*" (Emphasis added.)

